Co., L. R. 2 Exch. 228 (1867); *Sevier* v. *R. R. Co.*, 92 Ala. 258 (1890).

Some courts in dealing with these cases have gone so far as to hold that the servant present, who is highest in authority, has the requisite power conferred on him by the necessity of the occasion. *Ry. Co.* v. *McMurry*, 98 Ind. 358 (1885); *Ind. & St. L. Co.* v. *Morris*, 67 Ill. 295 (1873). Recovery is certainly not to be sustained on the theory of quasi-contracts if the grade of the agent and not the necessity is to determine the principal's liability.

In a recent Kentucky case, *Godshaw* v. *Struck*, 58 S. W. 781, the foreman of the defendant contractor employed the plaintiff to attend a workman injured by a falling brick. The Court of Appeals denied the surgeon's right to recover, holding that the doctrine of the railway cases applied exclusively to them. Undoubtedly, the defendant should not be held liable *Swazey* v. *Mfg. Co.*, 42 Conn. 556 (1875); *Chaplin* v. *Freeland*, 34 N. E. 1007 (Ind., 1893), but if the anomalous doctrine of the railway cases is recognized, it is not clear why it is not extended to other cases within the reason of the rule.

It is said that men in the railway service are usually at work far from their homes, and are apt to be injured when in localities where they have neither friends nor credit. *Chaplin* v. *Freeland, supra.* But these statements are equally true with respect to thousands of workmen living in the suburbs of any one of our great manufacturing centers—many of whom are engaged in occupations quite as hazardous as that of the railway employees.

PROTECTION OF BUSINESS OR OCCUPATION.—The first case in which an action was allowed for improper interference with a man's employment or business seems to have been *Garret* v. *Taylor*, Cro. Jac., 567, in the 18th year of James I, where plaintiff was given damages against defendant, who had driven away workmen and customers from plaintiff's quarry by threats of violence and of lawsuits. In a long series of cases at law and in equity the English courts worked out the principles of their jurisdiction in such matters. But in the case of *Allen* v. *Flood*, L. R., 1898, App. Cas. 1, the earlier cases were exhaustively reviewed and the House of Lords, overruling the view of the lower courts and of most (six out of eight) of the Judges whose opinion was asked, held that to procure a workman's discharge, where he had no binding contract of employment, and to prevent his future employment, by threats of strikes, etc., violated no legal right of the workman. Both the decision and the reasoning by which it was reached substantially alter the law as previously understood, and sufficient time has not elapsed for the English courts to build on this new foundation.

Most of the reported cases in the United States arose upon applications for injunctions as a suit for damages is usually an utterly inadequate remedy. The general rule in this country agrees rather with the views held in England before *Allen* v. *Flood*, than with

those laid down by the House of Lords in that case. An employer may engage whom he likes; an employee may work for whom he chooses; aside, of course, from special contracts. Generally, workmen may combine to obtain better wages, etc., and may strike—and endeavor to persuade others to leave, or not go to work, so long as peaceable means only are employed; but they may not use their organizations to compel the discharge of other workmen, either by violence or by strikes, threats, etc. *Curran* v. *Galen*, 152 N. Y. 33 (1897); *Cumberland, etc., Co.* v. *Glass Assn., N. J.* 46 Atl. 208 (1899); *Beck* vs. *Teamsters' Union*, 118 Mich. 497 (1898); *Amer. Steel, etc., Co.* vs. *Wire Drawers, etc., Union*, 90 Fed. 608 (1899); 28 Law. Rep. Ann. 464, note. In a number of States, of which New York and New Jersey are examples, the right to combine and strike to better their condition, is given to workmen by statute.

In the recent case of *National Protective Assn.* v. *Cuming*, 53 App. Div., 227 (1900) the New York Supreme Court follows *Allen* v. *Flood* rather than the American cases. In view of the fact that a considerable proportion of the cases are brought by workingmen whose livelihood is in danger, *e.g.*, *Curran* v. *Galen*, 152 N. Y., 33; *Plant* v. *Woods*, 57 N. E. 1011; Mass. (1900) and this very case of *Nat'l Assn.* v. *Cuming*; the advisability of restricting the authority now exercised by the Courts is at least questionable, for in such cases it is certainly used to protect individual freedom. It is doubtful, however, if the Court of Appeals will sustain the distinction attempted to be drawn between the Cuming case and *Curran* v. *Galen*.

For a discussion of the charges of "Government by Injunction" which have been made in connection with these and similar cases, see *Amer. Steel, etc., Co.* v. *Wire Drawers, etc., Union, supra; Shoe Co.* v. *Saxey*, 131 Mo. 212; (1895) Matter of Debs, 158 U. S., 564; (1844) 28 L. R. A., 464, note.

REMOVAL OF CAUSES. CITIZENSHIP OF CORPORATION.—*Walters* v. *C. B. & Q. R. R. Co.*, 104 Fed. 377 (Cir. Ct., D. of Neb., Oct. 3, 1900).

A corporation, as existing only by act of the Legislature, would seem to have a separate existence, for purposes of citizenship, in each State where it has been recognized by an incorporating as distinguished from a mere enabling act (*Morawetz, Corporations*, § 996, 999). Recent federal decisions apparently tend to nullify this distinction in matters of jurisdiction.

In *R. R. Co.* v. *Whitton*, 13 Wall. 283 (1871) the Supreme Court allowed a citizen of Illinois to sue defendant corporation in the Circuit Court of Wisconsin, where the cause of action arose, though defendant had also been incorporated in Illinois. In *R. R. Co.* v. *James*, 162 U. S. 545 (1895), a citizen of Missouri sued a corporation of the same State in the District Court of Arkansas for injuries received in Missouri. Held, the action must fail for want of